



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUL 30 2012

REPLY TO THE ATTENTION OF:

WC-15J

**CERTIFIED MAIL 7009 1680 0000 7669 4315**  
**RETURN RECEIPT REQUESTED**

The Honorable Mike Moore, Mayor  
City of Jeffersonville  
Suite 250 City Hall  
500 Quartermaster Court  
Jeffersonville, Indiana 47130

Dear Mayor Moore:

The purpose of this correspondence is to provide notice as required by the Consent Decree (CD) filed on September 17, 2009, and entered on November 24, 2009, regarding several matters which have been raised by the City with respect to its Long Term Control Plan (LTCP), the Supplemental Environmental Project (SEP) and other requirements of the CD.

Federal Supplemental Environmental Project (SEP)

Section VIII. A. of the Consent Decree requires the City to implement the SEP described in Appendix E of the Consent Decree, a constructed wetland storm water treatment system, on or before October 31, 2010, and to file a SEP Completion Report no later than December 1, 2010. As we now know, the City was unable to implement this SEP because the land on which it was to be constructed became unavailable. EPA had no notice of this problem until October 19, 2011 as EPA conducted a Reconnaissance Inspection (RI) of the facility and then again, on November 2011 when the City proposed an alternative SEP. Had the City timely informed EPA of the problem (within thirty days as required by paragraph 73 of the Consent Decree), it may have been able to invoke the Force Majeure provisions contained in Section X. of the Consent Decree. Because it did not, the City is now subject to stipulated penalties of \$1,000 to \$3,000 per day from the initial date of noncompliance, as set forth in paragraph 64 of the Consent Decree.

However, because of the City's past and generally continuing cooperation and diligence in implementing other aspects of the Consent Decree, EPA is deferring imposition of stipulated penalties, subject to EPA's final approval and quick implementation by the City of the substitute SEP, a 14.7 acre wetland restoration near Woodland Court as described in the conceptual wetland restoration plan submitted December 2, 2011.

While EPA believes the restoration concept is viable and the project has good potential, this letter also serves as notice of disapproval of the proposed substitute SEP for the following reasons:

- The SEP makes reference to a Redwing delineation of the site in October 2008 and February 2009. Please provide this document. In addition, provide any other documents in your possession which are a source of baseline information for the site, the history of the site and current site conditions. This may include descriptions of historic and existing plant communities, historic and existing hydrology, soil conditions, maps showing the location of the site or the geographic coordinates for the site, and other information.
- The SEP plan does not include a maintenance plan. A description and schedule of maintenance requirements, to ensure the continued viability of the resource once the initial construction is completed, must be provided. Actions taken within the project area to establish and maintain desired habitat conditions should be addressed. For example, maintenance may include water level manipulations, herbicide use, mechanical plant removal, and prescribed burning.
- The SEP plan does not include wetland performance criteria/standards. The SEP must contain more specifics about the ecological performance standards to be achieved so that the success of the SEP wetland areas may be properly evaluated. The plan must include performance standards that will be used to ascertain whether the project is achieving its objectives. In that regard, the performance standards must relate to the objective of the project, so that it can be objectively evaluated to determine whether it is developing into the resource type intended, providing the appropriate functions and values intended, and attaining any other pertinent metrics. For example, reference is made to wetland plantings and floodplain/riparian forest plantings in the SEP plan. The following is a good example of a performance standard for forested wetlands: *a minimum of 400 native, live and healthy (disease and pest free) woody plants per acre (of which at least 200 are tree species) must be present at the end of the monitoring period.*
- The SEP plan does not address the need for monitoring of the restored and established wetlands. The SEP plan must include a description of parameters to be monitored to determine if the wetland areas are on a trajectory to meet performance standards. In addition, a schedule for monitoring and reporting of monitoring results to EPA must be included in the SEP. Annual monitoring reports must be provided to EPA. These reports should be based on field evaluations during May (spring) and September (fall) of each year. The reports should include assessments of hydrology, vegetation, soils and overall condition of the SEP wetlands.

- The SEP does not include an adaptive management/contingency plan. The SEP should include a management strategy to address unexpected changes in site conditions. Examples of some adaptive management actions include, but are not limited to, replacing dead or dying plants, changing hydrological regimes, controlling the degree of erosion, repairing and/or maintaining structures to assure appropriate operating conditions and removing invasive or exotic species. Adaptive management plans should include information regarding corrective actions that will be taken, as well as the party or parties responsible for implementing adaptive management measures.
- A revised schedule for design, bid, construction and completion of the SEP must be included.

The items above need to be adequately addressed in the SEP plan. It is not approvable as proposed. If Jeffersonville fails to respond to these deficiencies by submission of a supplemental report for EPA's further review within 60 days of receipt of this notice, EPA will seek stipulated penalties under paragraph 64 of the Consent Decree.

#### Tenth Street Sewer Separation

In a December 12, 2011, memorandum submitted to EPA and IDEM by Jeffersonville's Wastewater Director, the City requested a delay in the completion date for the Tenth Street Phase II Sewer Separation Project. Figure 10.02-1 to the approved LTCP lists the completion date for this project as 9/30/2012. The City now requests the date for the design alone be extended to 2013 due to the need to coordinate with a Department of Transportation street widening project to occur this year. The City contends combining the two projects will provide significant cost savings to the City. While EPA will consider the idea to combine the projects, we require a revised schedule showing start and completion dates for the sewer separation design, bid, construction and completion to be keyed to the stipulated penalty provisions of paragraph 51 "Failure to Maximize Flow and Storage in the Sewer System to Minimize Wet Weather CSO Discharges" of the Consent Decree. Furthermore, this alteration in the LTCP schedule may require an amendment to the Consent Decree.

#### Overall Implementation Schedule

Several other projects were scheduled to begin before the end of 2011, including Mulberry Street sewer separation phase I; CSO storage; and upgrade of the Mill Creek lift station. The current status of these projects is unclear. Please provide an update on their status and indicate whether any delays in these projects will impact their completion dates or the current target dates of other projects listed in the most recent Gantt chart.

We will be happy to discuss all of the above concerns with you.

Your response should be mailed to:

John "Jack" J. Bajor, Jr.  
Enforcement Officer  
U.S. EPA, Region 5 (WC-15J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

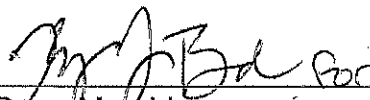
And

Dave Tennis  
CSO Project Manager, Compliance Branch  
Office of Water Quality  
Indiana Department of Environmental management  
100 North Senate Street  
P.O. Box 6015  
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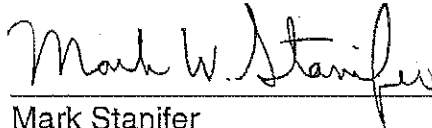
Mark Stanifer  
Chief, Compliance Branch  
Office of Water Quality  
Indiana Department of Environmental Management  
100 North Senate Street  
P.O. Box 6015  
Indianapolis, Indiana 46206

Please Contact Jack Bajor at (312) 353-4633 or [bajor.john@epa.gov](mailto:bajor.john@epa.gov) if you have any questions.

Sincerely,



Dean Maraldo  
Chief, Water Enforcement and Compliance  
Assurance Branch (WC-15J)  
U.S. Environmental Protection Agency, Region 5



Mark Stanifer  
Chief, Compliance Branch  
Office of Water Quality  
Indiana Department of Environmental Management

cc: W. Benjamin Fisherow, Acting Chief, Environmental Enforcement Section  
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